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RUEHCG/AMCONSUL CHENNAI 2674
RUEHBI/AMCONSUL MUMBAI 1915
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TAGS: [CJAN](#) [CVIS](#) [PTER](#) [PREL](#) [KCRM](#) [PHUM](#) [PGOV](#) [IN](#)
SUBJECT: FOLLOW-UP ON BARAPIND EXTRADITION ASSURANCES

REF: A. STATE 33728

- [1](#)B. NEW DELHI 994
- [1](#)C. STATE 6905
- [1](#)D. 05 NEW DELHI 9513
- [1](#)E. 12/01/05 POMPER EMAIL TO POST ATTACHING CAT
SUBMISSION
- [1](#)F. 05 NEW DELHI 4449

[1](#)1. (SBU) Summary: On March 29, 2006, Post received MEA Diplomatic Note T-413/11/2004 answering questions posed in USG Diplomatic Note 06/254/POL, dated March 7, 2006, regarding the extradition to India of Kulbir Singh Barapind. The full text of the GOI response is included below, as well as the name and contact information for Embassy POC for any post-extradition follow-up (per Ref A). We include here additional context regarding the significant positive changes since 1997 (i.e. post-Sandhu extradition) in the Indian political landscape regarding the treatment of Sikhs that should also be taken under careful consideration as this issue moves forward. End Summary.

GOI Response to Ref A Follow-Up Questions

[1](#)2. (U) With reference to the requested extradition of Kulbir Singh Barapind (referred to in the Indian note as Kulbir Singh Kulbeera aka Barapind) and USG obligation under the Convention Against Torture, the MEA has provided the following diplomatic note:

Begin text of MEA Diplomatic Note T-413/11/2004, dated 28 March 2006:

The Ministry of External Affairs presents its compliments to the Embassy of the United States of America in New Delhi and with reference to their Note Verbale No. 06/254/Pol dated 7th March 2006 regarding Mr. Kulbir Singh Kulbeera aka Barapind, has the honour to reiterate, as conveyed in this Ministry's note dated 6th February 2006, that Mr. Kulbir Singh Kulbeera aka Barapind on extradition to India, will be dealt with in accordance with the law. He will be entitled to all the rights of defence, protection and remedies available and shall not be subjected to torture, as defined in the Convention against Torture and other Cruel, Inhuman or Degrading treatment or Punishment, 1984.

As we conveyed in the Note Verbale dated 6th February 2006, India as a signatory to the Torture Convention has a good faith obligation not to act against the objectives and purposes of the Convention. Indian criminal law prohibits

the use of force or causing hurt to extort confession. The judicial decisions have interpreted the law to cover not only the physical hurt but the mental derangement/sufferings also.

Persons violating these provisions are subject to prosecution and imprisonment.

Once Mr. Barapind is extradited to India, the US Government will be informed about the status of the criminal trial against him for the alleged offenses in accordance with the provisions of the Indo-US Extradition Treaty. Article 21 of the Treaty provides for consultation in connection with the processing of individual cases and improving procedures for the implementation of the Treaty.

As for information concerning the old cases of Daya Singh Sandhu and Kamaljit Kaur Sandhu, this Ministry would obtain the requisite details from the concerned Indian authorities and convey to the esteemed Embassy in due course.

As regards access on a reciprocal basis, it is clarified that the US officials on request shall have access to the person extradited during trial in India, and on extradition of a person from India to USA, the Indian officials on request shall be provided access to the person extradited during his trial in the United States of America, irrespective of his or her nationality.

The Ministry of External Affairs avails itself of this opportunity to renew to the Embassy of the United States of America in New Delhi the assurances of its highest consideration.

End Text.

(NOTE: The GOI reference to USG Note Verbale No. 06/254/Pol

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dated 7th March 2006 corresponds with Ref C. End Note.)

Initial Assessment of GOI Response

13. (SBU) The GOI response appears to Post to answer most of the questions posed in Ref A. We note that the GOI response does not explicitly mention coordination with Punjab authorities to ensure Barapind's humane treatment, except to reiterate in the first two paragraphs that Indian law provides for his humane treatment and that persons violating this law are subject to prosecution and imprisonment. The GOI response for the first time notes that mental suffering falls under this rubric.

14. (SBU) The Indian response also did not specifically answer whether Barapind would be held in judicial remand upon his return to India, whether his trial would be held in Punjab, whether he would be held in Punjab prior to and during his trial, or where he would be incarcerated if convicted. The response does note in the third paragraph that the USG "will be informed about the status of the criminal trial against him," however.

15. (SBU) We also note the GOI indicated in its response that it would obtain and convey to us information regarding the post-extradition treatment of the Sandhus.

Embassy POC

16. (U) Per Ref A Para 6, Embassy POC will be Poloff Howard Madnick. Poloff will be with the Embassy until July, at which time a replacement POC will be selected. Contact information:

-- e-mail: madnickhj@state.gov
-- work phone: 91-11-2419-8657
-- mobile phone: 91-98105-97864

¶17. (SBU) The most glaring difference that distinguishes the 1997 Sandhu extradition from the Barapind extradition request is the changed political climate in Punjab. The insurgency that spawned police excesses was dying out in the mid-1990s; as of 2006 "the Punjab militancy" is a historical event, and the passage of time has reduced the intense operating environment. Many new human rights cases today are filed by the alleged victims of long-past abuses. Although the courts have been slow in clearing the historical case load, reports of truly new abuse cases are a small fraction compared to those lodged during the height of the insurgency. Moreover, Indian society's treatment of Sikhs has returned to the harmony and respect of the past, with Sikhs occupying senior positions throughout government and society.

¶18. (SBU) Another important difference to consider is that the Sandhu case proceeded relatively swiftly; the Indian government requested extradition in 1996 and it was executed in 1997 (Ref E). The Barapind extradition process has proceeded more deliberately, having begun with the Indian government request for extradition in September 1997. Mission believes the time and effort the Indian government has invested in retrieving Barapind -- and the prospect of US cooperation on future extraditions -- will also help protect Barapind's human rights.

Improved Conditions for Sikhs -----

¶19. (SBU) Conditions for Sikhs began to improve in the mid-1990s and progress has been rapid during the past five years. In order to answer Department of Homeland Security questions regarding the current treatment of Sikhs in India, Embassy New Delhi investigators have worked in Punjab and other Indian states for years to determine the validity of Sikh asylum applications; to date, we have been unable to substantiate a single such claim. Conditions since the mid-1990s have improved so dramatically that there have been no legitimate grounds for such asylum seekers since that period. Many legitimate asylum seekers who applied before that period and had already been settled in the US and other countries have since returned to India and reassimilated into Indian society. Indeed, recent press announcements have

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highlighted the cases of "wanted terrorists" who have since assumed leading positions in the Punjab business community.

Signatory to Convention Against Torture -----

¶10. (U) India signed the UN Convention against Torture and other Cruel, Inhuman or Degrading treatment or Punishment (Convention Against Torture or CAT) in October 1997, less than a year after the Sandhus were extradited, and nearly 10 years ago. Although not yet ratified, the Indian government recognizes that "as a signatory, India has good-faith obligation not to act against the objectives and purposes of the Convention" (Ref B).

High Profile, High Visibility, High Accountability -----

¶11. (SBU) Mission is keenly aware of the culture of torture and extrajudicial punishment in Indian jails, as we have outlined in successive Human Rights Reports; furthermore, Mission has been unable authoritatively to confirm whether the Sandhus were tortured by Indian police officials after their extradition. However, "Punjabi Kesari" editor Avinash Chopra -- who lost several relatives to Sikh terrorists in the 1980s-90s -- told us "no one will touch (Barapind)" because his case is considered high profile (in part because of the extradition) and also because of the strength of human

rights activists in Punjab (Ref D). Mission understands this will be the first extradition to India from the US since ¶2000. Mission also notes the continuing Indian press coverage of Abu Salem, who was extradited from Portugal last year for his alleged role as the principal suspect in the March 12, 1993 Mumbai bombings that killed 250 and injured more than 700. If Barapind is extradited, particularly after the Abu Salem extradition and the recent (and extensively media covered) historic visit of President Bush, Mission expects extensive and long-running media coverage will contribute to guaranteeing good behavior on the part of Barapind's jailers.

¶12. (SBU) We are similarly encouraged by the most recent terrorism case involving Sikh suspects, the May 2005 Delhi cinema bombings (Ref F). Mission believes the high visibility of the case helped ensure that police officers in Delhi, Haryana, and Punjab maintained professional standards. The investigation into the cinema bombings was marked only by arrests, not by extrajudicial killings or other police excesses.

National Human Rights Commission Maturing

¶13. (SBU) India's National Human Rights Commission -- the entity created in 1993 and tasked by law "for better protection of human rights" -- was a nascent organization when the Sandhus were extradited in 1997, but now has over a decade of experience in investigating and assessing human rights violations in India. Their mandate includes both positive human rights violations and "negligence in the prevention of such violation," according to the Protection of Human Rights Act (1993). GOI assurances aside, the NHRC is legally empowered to visit prisoners "in any jail or any other institution under the control of the State Government" for this purpose. Their senior officers are empowered to "enter any building where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document." The NHRC is an active organization that operates independently of the government and has loudly criticized some government institutions and actions.

Changed India-US Macro Dynamic

¶14. (SBU) Finally, the contours of the India-US relationship have dramatically improved over those in 1997. From a narrow and emerging relationship, we now have a broad-based and deep-rooted bilateral agenda on a range of issues, including counter-terrorism, which was lacking in 1997. Furthermore, the Barapind extradition -- if it is to transpire -- will do so after not one but two US Presidential visits since the Sandhus were extradited. The GOI would be interested in maintaining and furthering these relations, including for future extraditions, and would be more vigilant about not

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allowing any missteps that could lead to a reversal of relations either on extraditions specifically or on the India-US relationship more broadly.

¶15. (U) Visit New Delhi's Classified Website:
<http://www.state.sgov.gov/p/sa/newdelhi>
MULFORD